IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 743 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI MONTU SURESHCHANDRA GANDHI - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner No(s).: 1.

Mr.P.D.Bhate, APP for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 20/07/2005

ORAL JUDGMENT

1.By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed

for quashing and setting aside the order dated 26.5.2005 passed by respondent no.1 partly confirming the order of externment externing the petitioner from Ahmedabad City for a period upto 16.3.2006.

2. It appears from the record that the show cause notice dated 31.01.2004 came to be served upon the petitioner by the Assistant Commissioner of Police, “L” Division, Ahmedabad City under Section 56(b) of the Bombay Police Act, 1951 (“the Act” for short). It was alleged in the said show cause notice that the petitioner was dangerous person and was indulged in anti-social and illegal activities. It was alleged that on account of terror and fear of the petitioner, none was coming forward to file the complaint or depose against the petitioner. In the said show cause notice, two registered cases have been mentioned against the petitioner. The petitioner filed reply to the show cause notice denying the allegations levelled in the show cause notice. Ultimately, the order of externment came to be passed against the petitioner on 17.03.2005 by respondent no.2.

3.Being aggrieved by the said order of externment dated 17.03.2005, the petitioner preferred the appeal under Section 60 of the Act before the Additional Secretary, Home Department, Gandhinagar which came to be rejected vide order dated 26.05.2005. Against the aforesaid orders dated 17.03.2005 and 26.05.2005, the present Special Criminal Application is filed by the petitioner under Article 226 of the Constitution of India.

4.Heard Mr.H.R.Prajapati, learned advocate appearing for the petitioner and Mr.P.D.Bhate, learned APP for the respondents at length.

5.Mr.Prajapati, learned advocate appearing for the petitioner has raised manifold contentions. It is mainly contended by the learned advocate appearing for the petitioner that the notice has been issued by the Assistant Commissioner of Police, whereas the externment order has been passed by the Deputy Commissioner of Police. Mr.Prajapati has submitted that the person who issues the notice has to pass the externment order. He submitted that in the present case, the notice has been issued by the Assistant Commissioner of Police, “L” Division,

Ahmedabad City and the order has been passed by the Deputy Commissioner of Police, Zone-1, and, therefore, the impugned order deserves to be quashed and set aside. He further submitted that subjective satisfaction arrived at by the Deputy Commissioner of Police stands vitiated inasmuch as the show cause notice is vague and general which infringes the fundamental right of the petitioner to defend himself. It is, therefore, requested to quash and set aside the impugned order of externment.

6. On the other-hand, Mr.Bhate, learned APP has opposed this petition and has tried to justify the show cause notice and the impugned order. He submitted that the offences registered against the petitioner are considered while passing the order. He submitted that the externing authority has recorded the subjective satisfaction while passing the order, and, therefore, it is requested that this Court may not interfere with the impugned order and dismiss the petition.

7. Upon perusal of the scheme of the Act, it transpires that before passing any order of

externment under Section 56 of the Act, the externing authority is required to issue a notice to the proposed externee under Section 59 of the Act which has to be specific and in detail. If vague grounds are given in the show cause notice, it will certainly prejudice the petitioner in effectively raising his defence.

8. In the present case, upon perusal of the show cause notice and externment order, prima facie, it appears that the show cause notice was issued by the Assistant Commissioner of Police, “L” Division, Ahmedabad City, whereas the impugned order was passed by the Deputy Commissioner of Police, Zone-1, Ahmedabad City. It is, therefore, apparently clear that the impugned order has not been passed by the authority who had issued the show cause notice. Even in the affidavit-in-reply filed by respondent no.2, nowhere it is stated that the externing authority was actually the successor of the authority who had issued the show cause notice. Therefore, it can be seen from the material on record as produced before me, that the subjective satisfaction before issuing the show cause notice

was entertained by one authority, whereas the externment order was passed by another authority. However, it is equally true that if the satisfaction recorded by the authority is objective and is based on material on record, no interference is warranted.

9. It is required to be noted that the externing authority has recorded the subjective satisfaction on the basis of stale offences, i.e., incident of 2001 and 2003 inasmuch as the externing authority has not considered the statements of the witnesses produced by the petitioner, and, therefore, the authority has failed to keep live nexus with the material placed on record. It is also required to be noted that no activity of the petitioner has been shown to have any nexus with the adjoining districts for externing the petitioner from the contiguous districts. Under the circumstances, the impugned order of externment dated 17.03.2005 passed by respondent no.2 which is confirmed in appeal vide order dated 26.05.2005 deserves to be quashed and set aside.

10. For the reasons stated above, this petition is

allowed. The order of externment dated 17.03.2005 passed by the Deputy Police Commissioner, Zone-1, Ahmedabad City and confirmed in Appeal by the Additional Secretary, Home Department, Government of Gujarat vide order dated 26.05.2005 under Section 60 of the said Act are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(Sharad D.Dave,J)

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